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Equal Employment Opportunity Commission v. Footstar Corporation d/b/a Footaction, USA

Judge Jerry Buchmeyer

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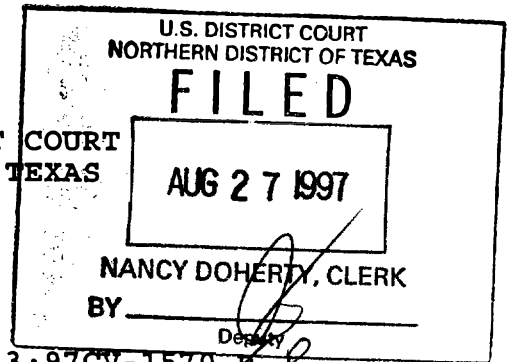
Equal Employment Opportunity Commission v. Footstar Corporation d/b/a Footaction, USA

Keywords

EEOC, Footstar Corporation, Footaction USA, 3:97CV-1570-R, Consent Decree, Disparate Treatment, Promotion, Constructive Discharge, Female, Sex, Title VII, Employment Law, Retail

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

FOOTSTAR CORPORATION d/b/a)
FOOTACTION, USA)

Defendant.)

C.A. No. 3:97CV-1570-R
Judge Buchmeyer

ENTERED ON DOCKET
TO R. C. P. RULES
58 AND 79a

CONSENT DECREE

This Consent Decree is made and entered into between the plaintiff, the Equal Employment Opportunity Commission (the "Commission") and the defendant, Footstar Corporation d/b/a Footaction USA, ("Footaction") (hereinafter collectively referred to as "the parties").

On June 30, 1997, the Commission instituted a lawsuit in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action Number 3:97-CV-1570-R, against Footaction alleging that the defendant violated Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, when it failed to promote Gaynor Garriss, and similarly situated individuals, into the position of Merchandise Manager, due to their sex, female. The Commission also alleged that Ms. Garriss, and similarly situated females, were constructively discharged from their employment with the defendant as a result of their inability to obtain a promotion to the position of Merchandise Manager and as a result of a glass

ceiling which existed at the defendant's place of business with regard to the advancement of qualified females into management positions.

The parties hereto desire to compromise and settle their differences embodied in the aforementioned lawsuit, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree. It is understood that this Consent Decree does not constitute an admission of liability or any wrong doing by defendant. Footaction expressly denies liability and/or wrongdoing.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues, including all like and related issues, raised in, or were reasonably subject to investigation or within the scope of EEOC Charge Number 310-95-2764. This Decree further resolves all issues in the Cause of Action filed by the Commission, Case No. 3-97-CV-1570-R. The Commission does not waive the processing or litigation of charges unrelated to the above referenced charge.
2. Footaction agrees that there shall be no discrimination or retaliation of any kind against any employee, former or present, because of opposition to any practice declared unlawful under Title VII of the Civil Rights Act of 1964, as

amended, or Title I of the Civil Rights Act of 1991, or because of the filing of charge, giving testimony, assistance or participating in any manner in any investigation, proceeding or hearing.

3. Footaction agrees to provide neutral employment references to any employer inquiring about the employment of Gaynor Garris and other persons identified as claimants by the Commission in this lawsuit. A reference shall include the dates of employment, salary history and the last position held by the employee.
4. Footaction agrees to eliminate from any and all applicable employment files all documents and entries relating to the facts and circumstances surrounding the filing of the charge or the settlement of the claims.
5. Footaction agrees to pay a total sum of \$218,000 (Two Hundred and Eighteen Thousand Dollars) to resolve this lawsuit.
 - a) Footaction agrees to expend not less than \$62,000 (Sixty-Two Thousand Dollars), over the two year term of this Consent Decree, to be used toward the training of its workforce, and programs which assist in the identification and development of women into management positions. Footaction agrees to utilize the aforementioned monies to implement the following programs:
 - I) Two hours of training each year regarding Title VII's prohibitions against discrimination including, but not limited to, a minimum of one half hour of training regarding gender based

discrimination, and a minimum of one half hour of sensitivity training. Such training shall be provided to the employees who work at Respondent's facility in Irving, Texas.

ii) Assist in the identification and development of women employees for management positions. The programs to be funded by these monies include mentoring programs, and executive training programs.

iii) To actively recruit women from Colleges and Universities.

b) Footaction will report to the Commission regarding the above programs in the following manner:

I) Within 30 days from the date training occurs, Foot action will notify the Commission of the time, date and place of each training session, and provide to the Commission an agenda of topics discussed at the training and a list of attendees.

ii) Footaction will provide an accounting to the Commission, on a bi-annual basis, as to the manner in which the funds were spent. The report will reflect what programs were funded, the purpose and goal of the programs, a description of the programs and how they were implemented, the names and work phone number of persons who enrolled, participated in or attended the programs, and the provider or vendor of the programs. Reports shall be due on January 15 and June 30, of each year, during the two year term of the Consent Decree.

iii) Footaction will provide bi-annual reports during the term of this Consent Decree, describing its recruitment efforts. The report shall include the name of the institution where the recruiting occurred and the date(s) Footaction conducted on campus interviews, the name and gender of persons who signed up to interview or applied as a result of the recruiting efforts, and indicate which applicants received offers of employment, if any. Reports shall be due on January 15 and June 30, of each year, for the term of the Consent Decree.

iv) Footaction shall identify present employees considered for the Merchandise Manager position and identify the person actually selected for the

position. Footaction shall provide a report which indicates the name, gender and prior position held, for each employee considered and each employee promoted to the position of Merchandise Manager, the date the selection for the promotion occurred and the effective date of the promotion. Reports shall be due to the Commission on January 15 and June 30, of each year, for the term of the Consent Decree.

- v) Footaction shall retain every resume, application for employment and/or other documents relating to applicant flow, submitted for the position of Merchandiser. Further, defendant shall retain internal job vacancy announcements for the position of Merchandise Manager, interview forms and notes, if any, and employment histories for internal applicants for the position of Merchandise Manager, for the term of this Consent Decree.

- 6. Footaction will announce job vacancies for management positions available within its Irving, Texas facility. Footaction shall establish and implement such procedures within six months from the date this Consent Decree is executed.
- 7. Footaction agrees to post on its bulletin board or other highly visible place at its facility in Irving, Texas, for the term of this Consent Decree, a notice of disposition of this action and defendant's commitment to non-discriminatory practices under Title VII of the Civil Rights Act of 1964, and Title I of the 1991 Civil Rights Act. A copy of the Notice Positing is set forth in Attachment "A". Footaction shall forward to the attorney of record at the Commission's Dallas District Office, a certification that the aforementioned notice was posted and a statement of the

location and date of the posting.


8. Footaction agrees to continue to operate and publicize to employees, during the term of the Consent Decree, the existence of a toll free number (or "hot-line") which may be utilized by employees of Footaction, to register complaints and concerns regarding possible violations of anti-discrimination laws. A summary of the hotline calls, which are received by an independent third party, will be directed to the legal department for Footaction once a month. The summary shall include the name of the complainant, if any, the date the complaint was made, and a summary of the issues raised by the caller.
9. The Commission reserves the right to seek contempt sanctions for non-payment and non-compliance with this Court Order and Judgment. If the Court determines that Footaction failed to tender payment or otherwise failed to timely comply with the terms of this Consent Decree, Footaction shall:
 - a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
 - b. Bear any additional costs incurred by the plaintiff caused by the non-compliance or delay of the Defendant.
 - c. Notwithstanding the foregoing, the Commission agrees that as a precondition to seeking enforcement of the Consent Decree, the Commission shall provide Footaction with notice of any alleged default. Footaction

has 20 days from the date notice of default is received to cure any alleged deficiencies.

10. The parties agree to bear their own cost associated with this action, including attorney's fees.
11. The Commission has the right to specifically enforce the terms of this Decree. Nothing in this Consent Decree can preclude future action by the EEOC or any other person to remedy any other alleged violations of anti-discrimination laws by Defendant unrelated to this claim.
12. The Court shall retain jurisdiction of this action for the period of two (2) years for the purposes of compliance with this Consent Decree and the entry of such further orders as may be necessary to effectuate the purposes of this Consent Decree.

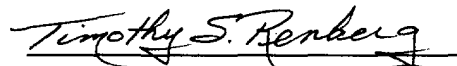
APPROVED AND AGREED TO AS TO FORM AND CONTENT:

FOR THE PLAINTIFF,
THE UNITED STATES
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:


JEFFREY C. BANNON
REGIONAL ATTORNEY
Connecticut Bar. 301166

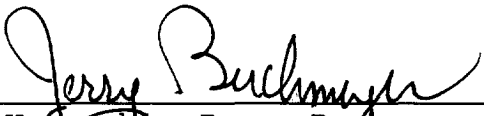
Robert Canino
Supervisory Trial Attorney

FOR THE DEFENDANT,
FOOTSTAR CORPORATION
d/b/a FOOT ACTION USA


Vice President, Human Resources

Carla J. Vogel
Senior Trial Attorney
Texas Bar No. 20599300

SO ORDERED, ADJUDGED AND DECREED this 26 day of Aug,
1997.



The Honorable Jerry Buchmeyer
UNITED STATES DISTRICT COURT JUDGE

NOTICE TO EMPLOYEES

1. This NOTICE to all employees of Footaction U.S.A. is being posted as part of a Consent Decree between Footaction U.S.A. and the U.S. Equal Employment Opportunity Commission.
2. Federal law requires that there be no discrimination against any employee or applicant for employment because of that person's race, color, religion, sex, national origin, disability or age with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment.
3. Footaction U.S.A. will comply with such Federal law and it will not take any action against employees because they have exercised their rights under the law by filing charges with the U.S. Equal Employment Opportunity Commission.
4. Footaction U.S.A. will abide by the terms of the agreement and will not deny an employee a promotion based on their sex.
5. Any employee who feels he/she is the victim of employment discrimination actions may report their complaints to a company Human Resources Representative; may call the company hotline number at 1-800-241-5689; or contact the Equal Employment Opportunity Commission, 207 South Houston, Dallas, Texas 75202, telephone number (214) 655-3355.
6. This NOTICE will remain posted until _____, by direction of the U.S. Equal Employment Opportunity Commission.

SIGNED _____ day of _____, 1997

Signature
For Footaction

